

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

*** FILED ***
06/14/2002

06/05/2002

CLERK OF THE COURT
FORM V089

HON. ROLAND J. STEINLE

Y. Mesa
Deputy

CV 2000-008152

FILED: _____

ZEE MEDICAL INC

DAN W GOLDFINE

v.

CONNIE ESKELSON, et al.

LAWRENCE J ROSENFELD

TERRY BAYS SMITH

TRIAL SETTING

8:15 a.m. **IN CHAMBERS:** This is the time set for Pretrial Conference. Plaintiff is represented by counsel, Dan W. Goldfine. Defendant is represented by counsel, Lawrence J. Rosenfeld.

A court reporter is not present.

IT IS ORDERED adopting by reference, as an order of the Court, the Joint Comprehensive Pretrial Conference Memorandum. The terms of the memorandum shall govern unless inconsistent with any provisions of this minute entry.

Court and Counsel discuss pretrial matters.

IT IS ORDERED AS FOLLOWS:

I. **SETTING A TRIAL TO JURY** in this matter **Monday, April 7, 2003 at 9:30 a.m.**

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BEFORE:
HONORABLE ANNA M. BACA
101 W. JEFFERSON
8TH FLOOR - COURTROOM 811
PHOENIX, AZ 85003

THIS IS A FIRM TRIAL SETTING.

II. CLOSURE OF DISCOVERY AND MOTIONS

A. RULE 26.1

1. Plaintiff shall disclose their initial expert witnesses and all of the information required by Rule 26.1(a)(6), Arizona Rules of Civil Procedure, by 5:00 p.m. on Friday, September 27, 2002.

The parties shall file a full and fair statement of all expert opinions and their factual basis.

2. Defendant shall disclose their initial expert witnesses and all of the information required by Rule 26.1(a)(6), Arizona Rules of Civil Procedure, no later than Friday, September 27, 2002.

The parties shall file a full and fair statement of all expert opinions and their factual basis.

3. The parties shall disclose rebuttal expert witnesses no later than Thursday, October 31, 2002. No information disclosed after that date may be used at trial absent court order on motion and affidavit.

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B. **Pretrial Motions**

All pretrial motions, other than motions *in limine* and motions for summary judgment, as discussed below, shall be filed no later than **Friday, February 21, 2003.**

C. **Discovery Cutoff**

All discovery shall be completed no later than **Friday, January 31, 2003.**

III. **TRIAL MANAGEMENT CONFERENCE**

Trial Management Conference (TMC) is set on **Friday, March 28, 2003 at 10:00 a.m.** before Judge Anna M. Baca.

At the TMC, Counsel shall be prepared to discuss:

- A. Time limits in *voir dire*, opening statements, examination of witnesses and closing arguments.
- B. Stipulations for the foundation and authenticity of exhibits.
- C. Jury instructions (preliminary and final), juror notebooks (Counsel shall bring any proposed jury notebooks to the conference), mini-opening statements and *voir dire*.
- D. Agreed-upon deposition summaries and excerpts from deposition transcripts and the editing of videotaped depositions.

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Narrative summaries with brief excerpts of deposition question and answer testimony are preferred at trial rather than the reading in of pages of testimony.

- E. Use of "short trial" or summary jury trial.
- F. Any special scheduling or equipment issues.
- G. Status of settlement of the case.

COUNSEL WHO WILL BE THE TRIAL LAWYERS ON THE CASE ARE REQUIRED TO ATTEND THE TRIAL MANAGEMENT CONFERENCE.

FAILURE OF TRIAL COUNSEL TO ATTEND THE TRIAL MANAGEMENT CONFERENCE MAY RESULT IN PERSONAL SANCTIONS.

IV. JOINT PRETRIAL STATEMENT

The Joint Pretrial Statement (JPTS) in accordance with Rule 16(d), A.R.Civ.P., is due in this division by 5:00 p.m. on **Friday, March 7, 2003.**

In addition to the information required by A.R.Civ.P. Rule 16(d), Counsel are to identify in/with the JPTC all deposition or other transcribed testimony that may be offered at trial. The proposed testimony is to be identified by reference to page and line numbers. Objections, if any, to such testimony, and the reasons for such objections, are also to be set forth.

Also, with the JPTS, Counsel shall deliver to this division, copies of the following:

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- A. Proposed *voir dire* questions which the parties wish the Court to give.
- B. A joint set of agreed-upon preliminary and final jury instructions. This does not include Preliminary Civil RAJI or Standard Civil RAJI (1 - 15) These will be given without request.
- C. Separate sets of requested instructions that have not been agreed upon. Please read *Rosen v. Knaub*, 175 Ariz. 329, 857 P.2d 381 (1993), and the RAJI Civil 3d Statement of Purpose and Approach before preparing the request for non-RAJI instructions.
- D. Proposed Findings of Fact and Conclusions of Law, if a request has been or will be filed. If no proposed Findings of Fact and Conclusions of Law is received, the request shall be deemed waived.
- E. A jointly-completed time and witness estimate form. The Court will use the form to predict the length of the trial for the jurors and to direct Counsel to follow the trial time limits established.
- F. In jury trial cases the parties shall jointly prepare a brief summary of the case which the Court will read to the jury at the commencement of *voir dire*.
- G. Any juror notebooks. The Court encourages use of juror notebooks in appropriate cases. Stipulating the contents in evidence is necessary. Key exhibits may be included, along with diagrams, photographs, timelines, non-argumentative summaries of positions of liability and damages and other information helpful to jurors.

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V. **MOTIONS IN LIMINE**

Any motions *in limine* shall be filed thirty (30) days before the TMC (or trial, if no TMC is set) and such motions must meet the test of State v. Superior Court, 108 Ariz. 396, 397, 499 P.2d 152 (1972): "The primary purpose of a motion *in limine* is to avoid disclosing to the jury prejudicial matters which may compel a mistrial." See also, Ariz. Rules of Evidence, Rule 103(c). A written response to a motion *in limine* may be filed no later than ten (10) days thereafter. The Court will rule on the motions *in limine* without oral argument. If the Court wishes to hear argument, the argument will be heard at the TMC (or the morning of trial if no TMC is set). No replies shall be filed.

VI. **MARKING EXHIBITS**

At least five (5) judicial days before the TMC, the trial lawyers or their knowledgeable assistants shall appear in this division to present all exhibits. The exhibits will be marked serially as they are listed in the pretrial statement - Plaintiff's first, Defendant's second. The parties shall advise the division, referring specifically to the pretrial statement, which exhibits may be marked directly in evidence. All exhibits will be clearly marked to correspond with the list provided. Counsel are directed to meet in person to exchange the exhibits before coming to court. Counsel will make sure that they do not bring to the clerk a Plaintiff's set of exhibits and a Defendant's set of exhibits that include duplicate exhibits. Counsel should not reserve exhibit numbers for all Defendant's exhibits, all Plaintiff's exhibits, miscellaneous demonstrative exhibits, and the like. Counsel shall also present original depositions for

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filing at that time. Written stipulations to admit specified exhibits in evidence are encouraged.

The Court will hear and rule upon objections at the TMC. The rulings will be stated on the record, using exhibit numbers. All objections to known exhibits and witnesses must be made before or during the Trial Management Conference.

VII. SETTLEMENT

If the case is set for a jury trial, one day's jury fees will be assessed unless the Court is notified of settlement before 2:00 p.m. on the judicial day before trial.

If the parties wish a settlement conference under Rule 16.1, Arizona Rules of Civil Procedure, they are to file a request with the Court whereupon a Judge Pro Tem will be appointed by DRAO. Alternatively, the parties are encouraged to hire their own mediator to conduct a conference at a time and place convenient to the parties.

8:25 a.m. Matter concludes.